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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,092	03/09/2007	Thomas Linden	710.1042	4326
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William C. Gehris Davidson Davidson & Kappel 485 Seventh Avenue 14th Floor New York, NY 10018			EXAMINER PECHT, JORGE O	
			ART UNIT 3664	PAPER NUMBER
			MAIL DATE 12/22/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/577,092

Applicant(s)

LINDEN, THOMAS

Examiner

Jorge O. Peche

Art Unit

3664

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8,9 and 11-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8,9 and 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of Applicant's argument/remarks filed on December 11, 2008, claims 8-9 and 11-14 are pending and an action on the merits is as follows.

Applicant's arguments with respect to claims 8-9 and 11-14 have been fully considered but are moot in view of the new ground(s) of rejection. Applicant has amended claims 8, 11, 14, cancelled claim 10, and added claim 15.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims **8** and **14** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The invention fails to disclose a method for "restricting the combined point value when the combined value is outside the predefined range of the upper limiting value and the lower value .. "(see page 8, par. 29).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims **8** and **14-15** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "actuating a brake and/or driving device of so that the determined actual value of the distance variable assumes the determined set point value of the distance variable" in claims **8** and **14** respectively does not clearly set the boundary of the claim language. There is not a clear connection role between the process of actuating a brake and/or driving device, the determined actual value of the distance variable and the determined set point.

The term "actuating a brake and/or driving device of the vehicle so that the determined actual value of the distance variable assumes the determined set point value of the distance variable" in claim **15** does not clearly set the boundary of the claim language. There is not a clear connection role between the process of actuating a brake and/or driving device, the determined actual value of the distance variable and the determined set point.

This rejection is presented in the best understanding of the claim limitations and in light of the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8-9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Matsumoto et al. (Patent No.: 5,865,265)**.

Regarding **claim 8-9**, Matsumoto discloses a vehicle travel aiding device for measuring a distance between a preceding vehicle and a relative running speed of two vehicles.

The method comprises the steps of:

- Determining an intervehicular distance between the actual and preceding vehicles (actual value of a distance variable) (see col. 3, lines 1-3; col. 7, lines 41-45).
- Determining a circumstance, response, and road condition values (a plurality of weighting values) for the intervehicular distance as a function of wiper switch, light switch, brake operation, handle operation, accelerator operation, and engine output signals (input variables / 1st, 2nd, 3rd, 4th weight values) which describe a vehicle driving situation, vehicle ambient situation, and/or driving behavior (see col. 7, line 41-col. 10, line 30; Figures 4-8).

- Determining a correct reference distance values (set point value) for the intervehicular distance as a function of wiper switch, light switch, brake operation and handle operation signals. The reference distance values are restricted to a predetermined value range (see col. 3, line 50 – col. 4, line 27; col. 5, line 40-col. 6, line 3; col. 7, line 41-col. 10, line 30; Figures 4-8).
- Actuating a brake and/or engine output to keep the necessary intervehicular distance (see col. 5, lines 5-17; col. 10, lines 25-30).

However, Matsumoto fails to disclose a method for multiplying the weighting values by one another to determine the set point value of the distance variable, and wherein to determine the set point value of the distance variable a geometric average of the weighting values is formed.

However, Matsumoto discloses an intervehicular distance alarm control (31) within a computer control portion (3) to determine the circumstance, response, and road condition values (a plurality of weighting values) as well as to calculate the correct reference distance values (set point value) for an intervehicular distance (see (see col. 3, line 50 – col. 4, line 27; col. 5, line 40-col. 6, line 3; col. 7, line 41-col. 10, line 30; Figures 1-8). Under this process, the computer control portion (3) can process the above parameters by implementing a mathematic algorithm such a multiplication process and geometric average.

Doing so would enhance a vehicle travel aiding device capable to increase or decrease an intervehicular distance.

Furthermore, Matsumoto discloses a method for examining whether the steering handle, brake operation and vehicle speed signals exceed estimated thresholds (upper and lower limiting values / restricting parameters) to determine the circumstance, response, and road condition values (a plurality of weighting values / combined point value after the computer control (3) processes the signals) as well as to calculate the correct reference distance values (set point value) for an intervehicular distance (see (see col. 3, line 50 – col. 4, line 27; col. 5, line 40-col. 6, line 3; col. 7, line 41-col. 10, line 40)

Regarding **claim 11**, Matsumoto discloses correct reference distance values (set point value) defined by a predefining an upper and lower value (see tables 1-3).

Regarding **claim 12** refers to **claim 8-9**.

Regarding **claim 13**, Matsumoto discloses an alarm generating portion (4) for warning the driver of the vehicle if the intervehicular distance drops below the correct reference distance value (see col. 6, line 55 – col. 7, line 6, Figures 1-8).

Regarding **claim 14** refers to **claim 8**.

Regarding **claim 15** refers to **claim 8**.

Response to Argument

In the Applicant's arguments filed on December 11, 2008 with respect to the rejections of claims 8-9 and 11-14 under 35 U.S.C. 103(a) as being unpatentable over

Matsumoto et al. (Patent No.: 5,865,265) have been fully considered but are not persuasive.

Regarding Applicant's arguments, the Applicant is kindly invited to consider the above new ground of rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jorge O. Peche whose telephone number is (571)270-1339. The examiner can normally be reached on 8:30 am - 5:30 pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi H. Tran can be reached on 571-272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jorge O Peche/

Examiner, Art Unit 3664

December 18, 2008

/KHOI TRAN/

Supervisory Patent Examiner, Art Unit 3664